

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CASANDRA SALCIDO, AS NEXT  
FRIEND OF MINOR CHILDREN K.L.  
AND C.L., DENISE COLLINS,  
KENNETH LUCAS, AMBER LUCAS,  
INDIVIDUALLY AND AS  
REPRESENTATIVE OF THE ESTATE  
OF KENNETH CHRISTOPHER  
LUCAS, DECEASED, AND DEIDRE  
MCCARTY, AS NEXT FRIEND OF  
MINOR CHILDREN, K.J.L AND T.J.L.,**  
*Plaintiffs,*

**V.**

**HARRIS COUNTY, TEXAS, DEPUTY  
DAVID GORDAN, DEPUTY XAVIER  
LEVINGSTON, DETENTION  
OFFICER BRODERICK GREEN,  
DETENTION OFFICER ALICIA  
SCOTT, DETENTION OFFICER JESSE  
BELL, DETENTION OFFICER  
MORRIS THOMAS, AND  
DETENTION OFFICER ADAM  
KNEITZ,**  
*Defendants.*

**CIVIL ACTION NO. 4:15-CV-02155**

**JURY DEMAND**

**DEFENDANTS' AMENDED OBJECTIONS AND REPLY TO PLAINTIFFS' CONSOLIDATED RESPONSE  
TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

Defendants Harris County Sheriff's Office Deputy David Gordon, Deputy Xavier Leveston, Detention Officer Broderick Green, Detention Officer Alicia Scott, now known as Riley Alexander Scott, Detention Officer Jesse Bell, Detention Officer Morris Thomas, and Detention Officer Adam Kneitz in their Individual Capacities (collectively "Defendants") now file their Amended Objections and Reply to Plaintiffs' Response to Plaintiffs' Consolidated Response to Defendants' Motions for Summary Judgment ("the Response") and would respectfully show this Court as follows:

1. Defendants Officer Green Xavier Leveston, Officer Jesse Bell, Officer Morris Thomas and Officer Adams Kneitz filed their Motion for Summary Judgment on February 8, 2018. See DOC. NO. 145. Defendants Deputy Gordon and Officer Scott filed their Motion for Summary Judgment on February 9, 2018. See DOC. NO. 150.

2. Plaintiffs filed their Consolidated Response to Defendants' Motions for Summary Judgment on April 9, 2018. See DOC. NO. 175.

3. Defendants now file their Amended Objections and Reply.

4. There is no trial setting in this cause.

### **OBJECTIONS**

5. Defendants incorporate their Motion to Strike Plaintiffs' Counsel's Affidavit and Certain Exhibits as if fully set forth herein. In addition, Defendants assert the following objections to Plaintiffs' summary judgment evidence.

6. In addition to the matters identified in the Motion to Strike, Defendants object to the admission of Plaintiffs' Exhibit 3, a letter from the United States Department of Justice dated June 4, 2009 ("the Findings Letter") on the following additional grounds. The investigation to which the Findings Letter refers was conducted by the DOJ of the Harris County Sheriff's Office ("the Sheriff's Office") and not of the Defendants. The Findings Letter does not identify Defendants as having engaged in misconduct, or even as having been the subjects of the investigation. There is no evidence that Defendants received a copy of the Findings Letter, that they had any knowledge whatsoever of the Findings Letter or that they were involved in policymaking on behalf of the Sheriff's Office in any way. Admission of the Findings Letter against Defendants is improper as it is irrelevant to Plaintiffs' claims against them, is confusing and is prejudicial.

7. Defendants object to the following pages and lines of the deposition excerpts of Officer Riley Scott attached to Plaintiffs' Response as Exhibit 6 (DOC. NO. 17-9):

<b>Page/Line</b>	<b>Objections</b>
Page 9, line 24 to page 10, line 2	sidebar
Page 10, lines 3-8	vague, argumentative
Page 10, lines 9-16	argumentative
Page 11, lines 1-6	vague
Page 11, lines 7-15	vague, calls for speculation, calls for a legal conclusion, argumentative
Page 11, lines 17-22	vague, calls for speculation, calls for a legal conclusion, argumentative
Page 12, lines 2-13	vague, argumentative, calls for speculation, calls for a legal conclusion
Page 13, lines 1-6	argumentative
Page 14, lines 5-11	vague, calls for speculation, calls for a legal conclusion
Page 14, lines 12-15	vague, calls for speculation, calls for a legal conclusion
Page 14, lines 16-23	vague, assumes facts not in evidence, and argumentative
Page 14, line 24-page 15, line 5	vague, argumentative, harassing
Page 15, lines 6-13	calls for speculation, vague and argumentative
Page 15, lines 14-19	sidebar
Page 15, line 20-page 16, line 1	calls for speculation, assumes facts not in evidence, argumentative
Page 16, lines 5-9	vague, calls for speculation, argumentative
Page 16, lines 12-19	vague, calls for speculation, argumentative
Page 16, line 23-page 17, line 2	argumentative, mischaracterizes the witness's testimony
Page 18, lines 5-16	relevance, mischaracterizes the witness's testimony
Page 29, line 25-page 30, line 5	relevance
Page 30, line 22-page 31, line 1	vague
Page 31, line 22-25	assumes facts not in evidence
Page 32, lines 1-3	assumes facts not in evidence
Page 33, lines 3-8	vague
Page 36, lines 18-24	calls for speculation
Page 36, line 25-page 37, line 4	calls for speculation
Page 37, lines 5-12	calls for speculation, asked and answered
Page 37, line 18-page 38, line 1	argumentative
Page 40, lines 5-7	argumentative
Page 40, lines 8-16	argumentative
Page 40, lines 17-20	vague
Page 41, lines 22-25	vague
Page 42, lines 7-10	argumentative
Page 43, lines 8-13	asked and answered

Page 45, lines 2-10	vague, irrelevant
Page 45, lines 11-15	vague, irrelevant
Page 45, line 23- page 46, line 8	vague, overbroad
Page 46, line 18-page 47, line 1	Calls for speculation
Page 47, lines 2-7	vague
Page 47, line 22-page 48, line 4	vague
Page 48, lines 7-14	argumentative
Page 48, lines 15-21	argumentative
Page 48, line 22-page 49, line 7	sidebar
Page 49, lines 8-10	sidebar
Page 49, line 23-page 50, line 2	vague
Page 50, lines 12-15	argumentative
Page 50, lines 19-20	argumentative
Page 50, lines 19-23	argumentative
Page 51, lines 19-22	sidebar, argumentative
Page 51, line 23-page 52, line 4	argumentative
Page 52, lines 5-8	argumentative, calls for speculation
Page 52, lines 15-19	calls for speculation
Page 56, lines 8-14	calls for speculation, assumes facts not in evidence
Page 56, lines 15-21	argumentative, calls for speculation
Page 56, line 22-page 57, line 1	argumentative
Page 57, lines 8-15	vague, argumentative, assumes facts not in evidence
Page 57, lines 16-22	vague, argumentative, assumes facts not in evidence
Page 57, line 23-page 58, line 8	vague, argumentative
Page 58, lines 11-17	argumentative, calls for speculation
Page 58, line 23-page 59, line 5	vague
Page 59, lines 9-15	vague
Page 59, lines 17-20	sidebar
Page 59, line 21-25	vague
Page 60, lines 1-4	vague
Page 60, lines 8-14	vague
Page 60, lines 15-21	vague
Page 60, line 24-page 61, line 5	vague, calls for speculation
Page 61, lines 6-11	vague
Page 61, lines 12-18	vague, argumentative
Page 61, line 21-25	vague, argumentative
Page 62, lines 1-9	vague
Page 62, lines 9-12	argumentative
Page 62, lines 20-22	global
Page 63, lines 6-9	argumentative
Page 63, lines 10-14	argumentative
Page 63, lines 15-18	vague
Page 63, line 23-page 64, line 3	vague, calls for a legal conclusion
Page 64, lines 4-10	vague, calls for a legal conclusion, argumentative
Page 64, lines 18-23	vague

Page 64, line 24-page 65, line 4	vague
Page 65, lines 11-17	calls for speculation, argumentative
Page 65, lines 18-24	vague, calls for speculation, assumes facts not in evidence
Page 65, line 25-page 66, line 5	sidebar, argumentative
Page 66, lines 6-15	vague, overbroad, assumes facts not in evidence, calls for an expert opinion
Page 66, lines 16-21	mischaracterizes the evidence
Page 67, lines 5-13	argumentative, misstates the evidence
Page 67, lines 14-15	sidebar
Page 67, lines 16-20	relevance, sidebar
Page 67, lines 21-23	relevance
Page 72, lines 3-8	vague
Page 72, lines 9-15	misstates the evidence
Page 73, lines 6-9	vague
Page 73, lines 15-22	vague, overbroad
Page 73, lines 23-page 74, line 3	argumentative
Page 74, lines 4-8	argumentative
Page 74, lines 9-16	asked and answered
Page 74, lines 17-22	calls for speculation, irrelevant
Page 83, lines 11-18	argumentative, calls for a legal conclusion
Page 83, line 19-page 84, line 4	argumentative, misstates prior testimony and evidence
Page 84, lines 14-21	vague, argumentative
Page 84, line 22-page 85, line 6	vague, argumentative
Page 85, lines 7-9	argumentative
Page 85, lines 11-17	vague, calls for speculation
Page 85, lines 18-20	vague, calls for speculation
Page 86, lines 3-10	calls for speculation
Page 89, lines 4-9	sidebar
Page 90, lines 9-18	vague, overbroad
Page 91, lines 11-18	vague
Page 100, lines 9-11	vague, overbroad
Page 101, lines 8-13	argumentative
Page 101, lines 14-16	Argumentative
Page 109, lines 19-22	argumentative, calls for a legal conclusion
Page 109, line 23-page 110, line 1	no question pending
Page 110, lines 2-8	calls for a legal conclusion
Page 111, lines 19-24	argumentative, asked and answered
Page 111, line 25-page 112, line 4	assumes facts not in evidence
Page 112, lines 9-13	asked and answered, argumentative
Page 112, line 22-page 113, line 4	argumentative
Page 116, lines 13-19	asked and answered
Page 116, lines 20-23	asked and answered
Page 119, lines 17-21	argumentative
Page 120, lines 6-10	vague, argumentative

Page 120, lines 16-20	calls for speculation
Page 121, line 23-page 122, line 3	vague, calls for speculation, argumentative
Page 122, lines 4-7	argumentative
Page 122, lines 8-14	argumentative
Page 122, lines 15-17	sidebar
Page 122, line 25-page 123, line 4	vague, overbroad, argumentative
Page 124, lines 7-13	vague, argumentative
Page 124, lines 14-19	argumentative
Page 124, line 20-page 125, line 1	vague, calls for a legal conclusion
Page 125, lines 2-12	calls for a legal conclusion
Page 125, lines 13-23	calls for a legal conclusion
Page 129, lines 10-17	vague
Page 130, lines 15-23	asked and answered
Page 131, lines 2-8	misstates the evidence, irrelevant, argumentative
Page 131, lines 9-15	argumentative
Page 131, lines 16-18	sidebar
Page 131, lines 20-21	argumentative
Page 131, line 22-page 132, line 2	argumentative
Page 132, lines 3-7	argumentative
Page 132, lines 8-12	argumentative
Page 132, lines 13-19	sidebar
Page 132, line 20-page 133, line 4	argumentative
Page 133, lines 5-7	argumentative
Page 133, lines 8-9	sidebar
Page 133, lines 10-12	sidebar
Page 132, lines 13-26	asked and answered
Page 136, lines 15-19	calls for speculation
Page 137, lines 5-14	calls for speculation
Page 138, lines 18-24	asked and answered
Page 138, line 25-page 139, line 8	asked and answered
Page 139, lines 9-14	asked and answered
Page 139, line 17-page 140, line 5	multifarious
Page 144, lines 1-7	vague
Page 144, lines 8-19	sidebar, vague
Page 148, lines 7-11	seeks an expert opinion
Page 149, lines 13-17	calls for an expert opinion
Page 151, lines 11-19	calls for speculation
Page 153, lines 1-8	vague
Page 153, lines 9-15	asked and answered
Page 153, lines 16-25	calls for speculation
Page 163, lines 3-9	misstates the witness's testimony
Page 163, lines 10-13	vague
Page 164, line 25-page 165, line 5	asked and answered
Page 166, lines 4-6	sidebar
Page 166, lines 19-25	sidebar, argumentative

Page 168, lines 6-9	calls for speculation
Page 168, lines 10-14	calls for speculation
Page 168, lines 21-24	assumes facts not in evidence
Page 170, lines 1-4	sidebar, argumentative
Page 171, lines 2-6	calls for speculation
Page 171, lines 7-11	assumes facts not in evidence
Page 171, lines 12-19	sidebar
Page 171, lines 20-24	mischaracterizes the evidence
Page 173, lines 14-20	asked and answered, calls for speculation
Page 174, lines 9-12	vague
Page 176, lines 10-13	asked and answered
Page 178, line 4-page 178, line 11	argumentative
Page 181, lines 9-17	argumentative
Page 181, lines 18-22	argumentative

8. Defendants object to the following pages and lines of Deputy Gordon's deposition attached to Plaintiffs' Response as Exhibit 7 (DOC. No. 175-10):

<b>Page/Line</b>	<b>Objections</b>
Page 10, line 24-page 11, line 3;	vague
Page 12, lines 15-21	argumentative and vague
Page 14, lines 19-24	vague
Page 15, lines 14-23	speculative
Page 15, line 24-page 16, line 10	vague
Page 16, lines 13-18	vague
Page 17, lines 14-22	vague, assumes facts not in evidence
Page 18, lines 6-11	vague, assumes facts not in evidence
Page 18, line 22-page 19, line 2	vague, calls for speculation
Page 19, lines 12-15	vague
Page 20, lines 21-25	argumentative, vague, assumes facts not in evidence
Page 21, line 22-page 23, line 4	argumentative, calls for speculation, vague, sidebar
Page 22, lines 9-16	argumentative, vague, calls for speculation
Page 23, line 3-page 24, line 4	sidebar, calls for speculation, vague
Page 23, line 3-page 24, line 4	sidebar, harassing, argumentative, calls for speculation
Page 24, lines 5-21	calls for speculation, hypothetical question
Page 26, lines 5-14	calls for speculation, assumes facts not in evidence
Page 26, line 15-25	sidebar, argumentative
Page 27, lines 10-14	vague
Page 27, lines 15-20	vague
Page 27, line 24-page 28, line 6	asked and answered, argumentative
Page 28, lines 16-21	asked and answered, argumentative
Page 28, line 25-page 29, line 4	argumentative
Page 29, lines 18-23	vague
Page 30, lines 6-12	multifarious

Page 30, line 25-page 31, line 4	vague
Page 32, lines 17-20	vague
Page 32, lines 13-16	vague
Page 32, lines 17-22	vague
Page 32, line 23-page 33, line 3	vague
Page 33, lines 4-8	vague
Page 34, lines 6-11	vague
Page 34, lines 12-15	vague
Page 35, lines 2-8	assumes facts not in evidence
Page 35, lines 9-14	assumes facts not in evidence
Page 35, line 24-Page 36, line 5	argumentative
Page 36, lines 6-10	argumentative, vague
Page 36, lines 11-18	argumentative
Page 36, lines 19-25	argumentative and sidebar
Page 37, lines 7-14	vague, argumentative, assumes facts not in evidence
Page 37, lines 15-18	vague, argumentative, assumes facts not in evidence
Page 37, line 19-page 38, line 3	calls for speculation, vague, argumentative
Page 38, lines 4-11	calls for speculation, calls for an expert opinion
Page 38, lines 12-18	calls for speculation, calls for an expert opinion
Page 39, lines 3-6	vague
Page 39, lines 20-24	vague
Page 39, line 25-page 40, line 5	vague
Page 40, lines 11-16	vague
Page 40, line 24-page 41, line 6	calls for speculation
Page 44, lines 21-25	calls for speculation
Page 47, lines 15-20	vague
Page 47, line 21-page 48, line 1	vague
Page 48, lines 5-21	calls for speculation, argumentative
Page 48, line 24-page 49, line 5	vague, argumentative, assumes facts not in evidence
Page 49, lines 6-10	vague
Page 49, lines 13-18	vague
Page 50, lines 16-20	asked and answered
Page 50, line 21-page 51, line 3	vague, assumes facts not in evidence
Page 52	assumes facts not in evidence, vague, calls for speculation
Page 52, lines 14-19	asked and answered
Page 52, line 20-page 53, line 2	relevance
Page 53, lines 3-9	vague, calls for speculation
Page 53, lines 18-23	calls for speculation, calls for an expert opinion
Page 54, lines 4-10	calls for speculation
Page 55, lines 13-18	vague
Page 56, lines 17-20	vague
Page 57, lines 2-6	vague, asked and answered
Page 57, lines 7-15	calls for speculation
Page 57, lines 16-21	vague

Page 58, lines 2-5	vague
Page 63, lines 2-4	argumentative
Page 65, lines 20-25	vague, argumentative
Page 66, lines 3-9	assumes facts not in evidence
Page 66, line 23-page 67, line 3	argumentative
Page 67, lines 4-14	mischaracterizes prior testimony
Page 67, line 20-page 68, line 1	vague
Page 68, lines 9-17	calls for speculation, vague
Page 68, lines 18-23	vague, calls for speculation
Page 68, line 24-page 69, line 5	vague, argumentative
Page 69, lines 9-15	vague, calls for speculation
Page 70, lines 3-15	vague
Page 70, lines 16-21	vague
Page 71, lines 6-15	vague, argumentative
Page 71, lines 16-18	sidebar
Page 71, line 19-page 72, line 2	vague, mischaracterizes prior testimony
Page 72, lines 3-13	vague, mischaracterizes prior testimony
Page 72, line 14-page 73	vague, calls for speculation
Page 73, lines 2-13	vague, calls for speculation, argumentative
Page 73, line 24-page 74, line 6	relevance, vague, calls for speculation, harassing
Page 74, lines 7-15	assumes facts not in evidence, calls for speculation
Page 74, lines 16-23	assumes facts not in evidence, calls for speculation, argumentative, vague
Page 74, line 24-page 75, line 8	argumentative, calls for speculation, vague, harassing
Page 75, lines 9-16	calls for speculation, vague, argumentative
Page 75, lines 17-20	vague
Page 76, line 1-17	vague, calls for speculation
Page 76, lines 18-22	vague, asked and answered
Page 77, lines 2-8	argumentative
Page 77, lines 12-23	vague, calls for speculation, misstates facts not in evidence, argumentative, asked and answered
Page 77, line 24-page 78, line 10	sidebar, argumentative
Page 78, lines 12-16	calls for speculation, vague, asked and answered
Page 78, lines 17-21	asked and answered, argumentative
Page 78, line 22-page 79, line 5	vague, calls for speculation
Page 79, lines 6-13	vague
Page 79, lines 21-24	vague
Page 80, lines 6-10	vague
Page 80, lines 11-15	vague
Page 81, lines 6-8	vague
Page 81, lines 9-17	vague, argumentative
Page 82, lines 1-9	object to demonstration
Page 82, lines 9-17	vague, argumentative
Page 83, lines 11-13	vague
Page 83, lines 18-21	vague

Page 84, lines 4-10	vague, calls for speculation
Page 84, lines 11-16	vague
Page 84, line 21-page 85, line 1	vague, calls for speculation
Page 85, lines 8-13	calls for speculation
Page 86, lines 1-5	vague
Page 86, lines 6-10	vague
Page 86, lines 11-18	assumes facts not in evidence, vague, calls for speculation, misstates the evidence, argumentative
Page 87, lines 1-7	vague, calls for speculation, argumentative, assumes facts not in evidence
Page 88, lines 5-19	vague, calls for speculation, calls for a legal conclusion, argumentative, assumes facts not in evidence
Page 88, lines 20-13	sidebar
Page 88, line 24-page 89, line 8	sidebar, argumentative, asked and answered
Page 89, lines 13-19	vague
Page 89, line 20-page 90, line 5	vague, calls for speculation, calls for a legal conclusion
Page 89, line 20-page 90, line 5	calls for speculation, calls for a legal conclusion, assumes facts not in evidence
Page 90, lines 8-13	vague, calls for speculation
Page 90, lines 23-25	sidebar
Page 91, lines 11-15	vague, calls for speculation
Page 91, line 24-page 92, line 7	vague, calls for speculation, argumentative
Page 92, lines 8-11	vague, argumentative
Page 92, lines 12-18	vague, argumentative, calls for speculation
Page 92, line 19-page 93, line 1	vague, calls for speculation, assumes facts not in evidence
Page 93, lines 2-12	vague, calls for speculation, assumes facts not in evidence
Page 93, lines 13-19	vague, calls for speculation, assumes facts not in evidence
Page 94, lines 4-25	sidebar, arguing with witness, vague
Page 95, lines 4-11	vague
Page 95, lines 12-17	vague
Page 95, line 18-page 96, line 2	vague, calls for speculation, argumentative, assumes facts not in evidence
Page 95, lines 4-11	vague
Page 95, line 18-page 96, line 2	vague, argumentative, assumes facts not in evidence, calls for speculation
Page 96, lines 4-9	sidebar
Page 96, lines 10-13	vague
Page 96, lines 18-22	vague, calls for speculation
Page 97, lines 2-7	vague, argumentative, calls for speculation
Page 97, lines 12-17	vague, calls for speculation
Page 97, lines 18-22	vague
Page 98, lines 4-10	object to relevance

Page 98, lines 11-15	object to relevance
Page 99, lines 5-11	vague
Page 99, line 24-page 100, line 3	vague
Page 100, lines 4-7	vague
Page 100, lines 8-11	vague
Page 100, lines 17-21	vague
Page 102, lines 4-9	vague, argumentative, assumes facts not in evidence
Page 102, lines 10-14	vague
Page 102, lines 15-21	vague, asked and answered
Page 103, line 24-page 104, line 4	vague, assumes facts not in evidence
Page 104, lines 9-14	vague, argumentative
Page 104, lines 15-20	vague
Page 105, lines 5-9	vague, argumentative, calls for speculation
Page 105, lines 10-22	vague, argumentative, harassing
Page 105, line 23-page 106, line 4	vague, calls for speculation
Page 106, lines 8-13	vague, argumentative, calls for speculation
Page 106, lines 14-19	vague, irrelevant, harassing
Page 106, line 23-page 107, line 2	asked and answered
Page 107, lines 3-10	asked and answered, vague
Page 107, lines 11-18	vague, calls for speculation
Page 107, line 19-page 108, line 2	vague, calls for speculation, calls for a legal conclusion
Page 108, lines 11-20	vague, calls for speculation, asked and answered
Page 108, line 21-page 109, line 5	argumentative, assumes facts not in evidence
Page 109, lines 15-18	argumentative, calls for speculation
Page 110, lines 9-16	vague, calls for speculation, calls for a legal conclusion
Page 110, lines 17-23	vague, calls for speculation, calls for a legal conclusion
Page 111, lines 8-17	vague, calls for a legal conclusion
Page 111, line 18-page 112, line 2	argumentative, calls for a legal conclusion
Page 112, lines 3-9	argumentative, calls for a legal conclusion, asked and answered
Page 112, lines 11-16	argumentative, calls for a legal conclusion
Page 113, lines 3-7	argumentative, calls for a legal conclusion
Page 113, lines 10-21	vague, argumentative, calls for a legal conclusion
Page 113, line 23-page 114, line 6	vague, harassing
Page 114, lines 10-11	vague
Page 114, lines 12-19,	vague, argumentative
Page 114, line 20-24	vague, harassing, irrelevant
Page 114, line 25-page 115, line 4	relevance, vague, calls for speculation
Page 115, lines 5-12	vague, argumentative
Page 117, line 25-page 118, line 2	vague
Page 120, line 21-page 121, line 2	vague, calls for speculation
Page 121, lines 3-9	vague, argumentative, calls for speculation
Page 121, lines 10-12	sidebar
Page 121, lines 13-23	asked and answered, argumentative, harassing
Page 123, lines 1-4	relevance

Page 123, lines 5-8	sidebar
Page 123, lines 9-15	relevance
Page 123, lines 16-19	vague
Page 123, lines 20-21	sidebar
Page 124, lines 1-8	misstates testimony, argumentative
Page 124, lines 13-17	vague
Page 124, lines 18-20	vague, argumentative
Page 128, lines 2-11	asked and answered
Page 130, lines 13-20	vague, calls for speculation, calls for a legal conclusion
Page 130, lines 21-25	vague, calls for speculation, calls for a legal conclusion
Page 131, lines 1-10	vague, calls for speculation, assumes facts not in evidence
Page 132, lines 1-7	calls for speculation
Page 132, lines 8-11	calls for speculation
Page 132, lines 12-17	vague, calls for speculation
Page 132, lines 18-21	vague, calls for speculation
Page 133, lines 1-8	vague, calls for speculation
Page 133, line 19-page 134, line 2	argumentative, misstates prior testimony
Page 134, lines 3-12	vague, assumes facts not in evidence
Page 134	vague
Page 134, line 25-page 135, line 4	sidebar
Page 135, lines 6-7 and 9	sidebar
Page 135, lines 12-22	vague
Page 136, lines 8-12	sidebar, argumentative
Page 136, lines 15-17	vague
Page 137, lines 17-25	vague, argumentative
Page 138, lines 19-23	argumentative, misstates facts not in evidence
Page 139, lines 14-21	vague
Page 140, lines 1-4	vague
Page 140, lines 14-17	attorney client privilege
Page 140, line 25-page 141, line 2	sidebar
Page 141, lines 17-24	vague, calls for speculation
Page 141, line 25-page 142, line 4	vague
Page 142, lines 8-13	vague
Page 142, lines 14-24	vague, calls for a legal conclusion
Page 143, lines 4-11	misstates the legal standard
Page 143, lines 15-19	vague
Page 143, line 23-page 144, line 2	vague

9. Defendants object to the following pages and lines of Officer Leveston's deposition attached to Plaintiffs' Response as Exhibit 9 (DOC. NO. 175-11):

Page/Line	Objections
Page 27, lines 7-10	vague

Page 28, lines 17-21	asked and answered
Page 31, lines 11-21	calls for speculation, inadequate predicate
Page 33, lines 15-21	calls for speculation
Page 40, line 24-page 41, line 25	sidebar, vague, inadequate predicate, calls for speculation
Page 42, lines 12-17	assumes facts not in evidence
Page 43, lines 3-13	calls for speculation
Page 44, lines 13-16	asked and answered
Page 46, lines 7-13	inadequate predicate, calls for speculation
Page 46, lines 14-20	inadequate predicate, calls for speculation
Page 47, lines 13-22	asked and answered
Page 48, lines 3-10	asked and answered
Page 54, lines 1-6	argumentative
Page 64, lines 13-28	asked and answered
Page 64, lines 19-23	calls for speculation
Page 69, lines 14-23	vague
Page 69, line 24-page 70, page 6	asked and answered
Page 71, lines 1-10	calls for a legal conclusion
Page 71, lines 14-20	calls for speculation
Page 71, line 23-page 72, line 5	calls for speculation
Page 72, lines 6-8	calls for speculation
Page 72, lines 9-14	calls for speculation
Page 72, lines 15-21	calls for speculation, sidebar
Page 77, lines 19-24	calls for speculation
Page 80, lines 13-17	calls for speculation
Page 80, lines 18-24	calls for speculation
Page 81, lines 5-8	calls for speculation
Page 81, lines 9-14	calls for speculation
Page 84, lines 3-8	calls for speculation
Page 84, lines 9-20	inadequate predicate
Page 86, lines 7-11	calls for speculation, inadequate predicate
Page 86, lines 17-19	asked and answered
Page 95, line 25-page 96, line 11	vague, calls for speculation; sidebar
Page 96, lines 12-16	argumentative
Page 97, lines 13-18	argumentative
Page 97, lines 19-page 98, line 1	argumentative, calls for speculation and inadequate predicate
Page 112, lines 15-21	misstates the witness's prior testimony, asked and answered
Page 113, lines 6-19	vague, inadequate predicate, calls for speculation
Page 113, line 20-page 114, line 4	vague, calls for speculation, inadequate predicate
Page 115, lines 11-16	vague
Page 129, lines 2-6	calls for a legal conclusion
Page 129, lines 7-16	vague, calls for a legal conclusion
Page 129, line 25-page 130, line 8	vague, calls for a legal conclusion

Page 130, lines 9-14	calls for a legal conclusion, asked and answered
Page 130, line 20-page 131, line 1	vague, inadequate predicate
Page 131, lines 2-6	calls for a legal conclusion
Page 131, lines 7-14	calls for a legal conclusion
Page 131, lines 15-23	inadequate predicate, misstates the witness's testimony, misstates the evidence in this case, asked and answered
Page 131, line 24-page 132, line 3	inadequate predicate, misstates the witness's testimony, misstates the evidence in this case, asked and answered
Page 132, lines 4-13	vague, inadequate predicate
Page 132, lines 14-19	vague, argumentative
Page 132, line 23-133, line 2	vague, argumentative
Page 133, lines 3-12	vague, calls for speculation, inadequate predicate
Page 133, line 20-page 134, line 1	inadequate predicate, calls for speculation
Page 134, lines 2-8	inadequate predicate, asked and answered
Page 134, lines 9-15	inadequate predicate, misstates the witness's testimony
Page 134, lines 20-23	argumentative
Page 134, line 24-page 135, line 3	argumentative and asked and answered
Page 136, lines 8-11	calls for speculation
Page 136, lines 13-18	calls for speculation
Page 136, lines 19-24	calls for speculation, inadequate predicate
Page 151, lines 8-18	calls for speculation
Page 153, lines 2-5	asked and answered
Page 153, lines 9-12	argumentative
Page 153, lines 16-20	argumentative
Page 154, lines 1-9	argumentative, calls for speculation
Page 154, lines 10-17	argumentative, calls for speculation

10. Defendants object to the following pages and lines of Deputy Green's deposition attached to Plaintiffs' Response as Exhibit 9 (DOC. NO. 175-12):

<b>Page/Line</b>	<b>Objections</b>
Page 17, lines 12-19	calls for speculation
Page 17, line 22-page 18, line 2	calls for speculation
Page 32, lines 3-8	calls for speculation
Page 33, lines 18-22	vague
Page 34, lines 1-7	calls for an expert opinion
Page 34, lines 8-23	Argumentative, asked and answered
Page 34, lines 15-23	argumentative, asked and answered
Page 36, lines 3-8	inadequate predicate, calls for speculation
Page 51, lines 1-6	calls for speculation
Page 52, line 12-page 53, line 4	calls for speculation
Page 53, line 5-21	calls for speculation
Page 59, line 21-page 60, line 2	calls for speculation
Page 64, lines 14-19	calls for speculation

Page 64, line 25 - page 65, line 6	calls for speculation, inadequate predicate
Page 91, lines 1-6	argumentative and harassing
Page 91, lines 7-18	mischaracterizes the witness's testimony, argumentative and harassing
Page 91, lines 19-24	calls for speculation and asked and answered
Page 92, lines 11-16	vague
Page 100, lines 4-7	argumentative
Page 100, lines 8-16	vague, inadequate predicate
Page 101, lines 1-6	calls for speculation and assumes facts not in evidence
Page 102, lines 3-5	vague, inadequate predicate, calls for speculation
Page 102, lines 6-14	assumes facts not in evidence
Page 103, lines 13-18	calls for speculation
Page 105, lines 3-5	objection form
Page 105, lines 9-12	calls for speculation
Page 105, lines 13-15	calls for speculation
Page 105, line 21-page 106, line 4	mischaracterizes the witness's testimony
Page 106, lines 5-10	mischaracterizes the witness's testimony
Page 109, line 23-page 110, line 2	mischaracterizes the witness's testimony
Page 110, lines 6-9	calls for speculation
Page 110, line 13-18	vague, calls for speculation
Page 111, lines 10-15	vague
Page 111, line 21-page 112, line 3	calls for speculation
Page 112, lines 14-19	mischaracterizes the witness's testimony
Page 112, lines 20-24	mischaracterizes the facts
Page 136, lines 5-12	calls for a legal conclusion
Page 136, lines 13-17	vague
Page 136, line 22-page 137, line 2	argumentative
Page 137, lines 8-14	calls for speculation
Page 137, lines 15-23	calls for speculation
Page 137, line 24-page 138, line 4	vague
Page 139, lines 2-8	calls for speculation
Page 139, lines 9-14	vague, calls for speculation
Page 139, lines 15-20	mischaracterizes the witness's testimony
Page 143, lines 14-20	calls for speculation, inadequate predicate
Page 149, lines 5-9	sidebar
Page 149, line 21-page 150, line 1	vague, argumentative
Page 150, lines 6-8	vague
Page 150, lines 14-18	vague
Page 150, line 22-page 151, line 1	calls for a legal conclusion
Page 151, lines 7-12	argumentative, calls for speculation
Page 151, lines 19-23	argumentative, calls for speculation
Page 154, lines 1-11	calls for speculation
Page 154, lines 12-23	calls for speculation
Page 155, lines 3-8	argumentative, calls for speculation
Page 155, lines 9-12	argumentative

Page 155, line 23-page 156, line 5	calls for speculation
Page 160, lines 6-10	calls for speculation

11. Defendants object to the following pages and lines of Deputy Morris's deposition given in this cause and attached to Plaintiffs' Response as Exhibit 10 (DOC. No. 175-13):

<b>Page/Line</b>	<b>Objections</b>
Page 13, lines 5-10	vague
Page 13, line 22-page 14, line 2	vague
Page 14, lines 5-10	vague
Page 14, lines 15-19	vague, calls for speculation
Page 14, line 20-page 15, line 5	sidebar, calls for speculation
Page 15, lines 12-25	vague, calls for speculation
Page 16, lines 1-7	sidebar
Page 17, lines 22-25	calls for speculation
Page 32, line 20-page 33, line 3	argumentative
Page 33, lines 15-18	asked and answered twice
Page 35, lines 12-19	calls for speculation
Page 52, lines 16-20	sidebar
Page 52, lines 21-24	sidebar
Page 53, lines 18-23	sidebar
Page 53, line 24-page 54, line 4	asked and answered
Page 54, line 19-page 55, line 2	calls for speculation, inadequate predicate, calls for an expert opinion
Page 61, lines 2-8	assumes facts not in evidence, mischaracterizes the evidence
Page 61, lines 9-25	calls for speculation, sidebar
Page 83, lines 8-11	calls for speculation
Page 87, line 22-page 88, line 1	calls for speculation
Page 90, lines 15-21	argumentative
Page 93, lines 6-10	calls for speculation
Page 116, lines 14-19	calls for speculation

12. Defendants object to the following pages and lines of Officer Kneitz's deposition attached to Plaintiffs' Response as Exhibit 11 (DOC. No. 175-14):

<b>Page/Line</b>	<b>Objections</b>
Page 15, lines 1-8	asked and answered, assumes facts not in evidence
Page 15, line 23-page 16, line 6	asked and answered, assumes facts not in evidence
Page 18, lines 18-23	calls for speculation
Page 19, lines 13-16	calls for speculation
Page 19, lines 20-23	vague, inadequate predicate
Page 25, lines 11-21	misstates the witness's testimony

Page 27, lines 15-20	vague
Page 33, lines 16-22	calls for speculation, inadequate predicate
Page 35, lines 3-8	calls for speculation, inadequate predicate
Page 36, lines 9-19	calls for speculation, inadequate predicate, vague
Page 37, lines 5-15	calls for speculation, inadequate predicate
Page 37, line 19-page 38, line 5	calls for speculation, inadequate predicate, misstates the facts in evidence, misstates the witness's testimony
Page 39, line 17-page 40, line 3	argumentative, vague, harassing
Page 40, lines 4-7	object to Plaintiffs' attorney testifying
Page 40, lines 13-18	asked and answered
Page 40, lines 19-24	calls for speculation
Page 41, lines 5-9	calls for speculation
Page 41, lines 16-21	calls for speculation
Page 41, lines 22-25	calls for speculation
Page 43, lines 2-9	asked and answered
Page 43, lines 12-19	vague, calls for speculation
Page 46, lines 10-20	vague, calls for speculation
Page 47, line 23-page 48, line 6	calls for speculation
Page 49, lines 18-22	calls for speculation
Page 53, lines 10-14	vague
Page 56, lines 2-11	vague
Page 57, line 25-page 58, line 6	vague
Page 58, lines 7-12	vague
Page 65, lines 16-24	calls for a narrative
Page 68, line 21-page 69, line 2	misstates the evidence
Page 69, lines 14-18	asked and answered
Page 69, line 19-page 70, line 2	calls for speculation, inadequate predicate
Page 70, line 17-page 71, line 1	calls for speculation, inadequate predicate, argumentative
Page 71, lines 13-24	calls for speculation, inadequate predicate, argumentative
Page 72, lines 2-9	calls for speculation, inadequate predicate
Page 73, lines 14-16	sidebar
Page 74, lines 1-10	vague, inadequate predicate, asked and answered, argumentative, calls for speculation
Page 74, lines 11-21	mischaracterizes the witness's testimony, vague, calls for speculation
Page 76, lines 7-15	vague, inadequate predicate, calls for speculation
Page 76, line 20-page 77, line 2	vague, calls for speculation, inadequate predicate
Page 77, lines 9-14	vague, calls for speculation, inadequate predicate
Page 77, lines 15-22	vague
Page 78, lines 2-11	vague, calls for speculation, inadequate predicate
Page 78, lines 12-19	calls for speculation, argumentative, assumes facts not in evidence
Page 79, lines 4-12	argumentative

Page 79, lines 18-23	calls for speculation
Page 80, lines 16-24	calls for speculation
Page 82, lines 13-19	calls for speculation, inadequate predicate
Page 83, line 21-page 84, line 5	calls for speculation, assumes facts not in evidence, inadequate predicate
Page 84, line 11-page 85, line 2	argumentative
Page 85, lines 21-24	calls for speculation, inadequate predicate
Page 85, line 25-page 86, line 15	argumentative, calls for speculation, inadequate predicate
Page 86, line 24-page 87, line 16	argumentative, calls for speculation, inadequate predicate
Page 88, lines 3-8	calls for speculation, assumes facts not in evidence, vague
Page 90, lines 17-22	vague
Page 90, line 23-page 91, line 5	vague
Page 92, lines 20-25	calls for speculation
Page 93, lines 8-11	calls for speculation, inadequate predicate
Page 93, lines 14-17	calls for speculation
Page 93, lines 18-23	calls for speculation
Page 93, line 24-page 94, line 6	calls for speculation
Page 94, lines 17-22	calls for speculation, inadequate predicate
Page 95, lines 12-18	argumentative
Page 96, lines 8-15	calls for speculation, inadequate predicate
Page 96, lines 20-24	calls for speculation
Page 97, lines 4-8	calls for speculation
Page 97, lines 9-15	calls for speculation
Page 97, lines 16-21	argumentative
Page 97, line 22-Page 98	line 2, argumentative
Page 98, lines 15-25	calls for speculation, inadequate predicate
Page 99, lines 9-23	calls for speculation, inadequate predicate
Page 99, line 24-page 100, line 9	calls for speculation, mischaracterizes the witness's testimony and the evidence in this case
Page 102, lines 18-22	vague, calls for speculation
Page 103, lines 6-8	calls for speculation
Page 104, lines 3-12	sidebar
Page 106, lines 8-12	vague
Page 106, lines 18-22	asked and answered

13. Defendants object to the following pages and lines of Officer Bell's deposition attached to Plaintiffs' Response as Exhibit 14 (Doc. No. 175-17):

Page/Line	Objections
Page 21, line 23-page 22, line 12	inadequate predicate, calls for speculation
Page 22, line 20-page 23, line 5	inadequate predicate, assumes facts not in evidence

Page 23, lines 7-14	vague, argumentative, inadequate predicate
Page 23, lines 15-21	argumentative, inadequate predicate
Page 25, lines 5-9	vague
Page 25, lines 10-14	vague
Page 25, lines 15-20	argumentative, inadequate predicate
Page 27, lines 6-9	argumentative
Page 27, lines 14-19	mischaracterizes the evidence
Page 28, lines 2-8	argumentative
Page 28, lines 9-21	argumentative
Page 28, line 22-page 29, line 1	argumentative, calls for speculation
Page 30, line 20-page 31, line 2	vague, inadequate predicate, asked and answered, calls for a legal conclusion
Page 34, lines 13-17	argumentative, inadequate predicate
Page 34, lines 18-21	argumentative
Page 34, line 22-page 35, line 3	argumentative, calls for speculation
Page 35, lines 18-25	vague, argumentative, inadequate predicate
Page 36, lines 3-7	argumentative, calls for speculation
Page 38, lines 11-15	calls for speculation
Page 38, lines 19-23	calls for speculation, assumes facts not in evidence
Page 39, lines 2-8	calls for speculation
Page 39, lines 9-14	calls for speculation
Page 43, lines 8-12	assumes facts not in evidence
Page 43, lines 13-20	assumes facts not in evidence
Page 43, lines 21-24	assumes facts not in evidence
Page 45, lines 6-12	vague, assumes facts not in evidence
Page 46, lines 16-25	vague, assumes facts not in evidence
Page 47, lines 11-22	vague, inadequate predicate
Page 48, line 25-page 49, line 7	vague, argumentative, asked and answered
Page 49, lines 11-14	argumentative
Page 50, lines 2-6	calls for speculation
Page 56, lines 18-22	inadequate predicate
Page 56, line 23-page 57, line 10	calls for speculation
Page 57, lines 12-17	calls for speculation
Page 57, lines 18-23	argumentative assumes facts not in evidence
Page 57, line 24-page 58, line 3	calls for speculation
Page 58, lines 4-11	calls for speculation, calls for a legal conclusion
Page 58, lines 17-20	calls for a legal conclusion
Page 59, lines 2-6	calls for a legal conclusion

14. Defendants object to the admission of the following opinions in the Plaintiffs'

Exhibit 24 (DOC. NO. 175-17), the Expert Report of Ron McAndrew:

- a. “Mr. Lucas reported at his initial medical evaluation that he took Xanax daily, and was experiencing withdrawal symptoms.” Plaintiffs’ Exhibit 24, page 5. It is undisputed that Defendants were not provided with any medical information about Kenneth Lucas, including his initial medical evaluation. Plaintiffs themselves have introduced evidence to that effect. This opinion is thus irrelevant to Plaintiffs’ claims against Defendants, would be confusing, and is prejudicial.
- b. “Mr. Lucas was never treated for the Xanax withdrawal, despite seeing multiple medical providers during his short incarceration. His behavior became stranger and more irrational during his short incarceration.” Plaintiffs’ Exhibit 24, page 5. This opinion should not be admitted against the Defendants, as there is no evidence that they had any knowledge of the treatment or lack of treatment of Kenneth Lucas. It is undisputed that due to the policies of the Sheriff’s Office, Defendants were not permitted to receive information about a detainee’s medical condition or history at the time of the extraction, including Kenneth Lucas. Plaintiffs themselves have introduced evidence of this fact. Admission of this opinion is thus irrelevant, confusing and prejudicial to Defendants.
- c. “In June 2009, almost five years before Mr. Lucas’s death, the U.S. Department of Justice had sent a finding letter to the Harris County Sheriff, Adrian Garcia....Among many other findings, the Department of Justice expressed “serious concern” that the Harris County Jail does not train staff that hogtying and chokeholds are dangerous, prohibited practices.” The Department specifically cautioned that during “planned uses of force”, including cell extractions, jailers should consult with medical staff before using force. (DOJ Findings, 15. The

Department found “staff use hazardous restraint and force techniques without appropriate guidance or sanction.” DOJ Findings, 16. Despite this prophetic warning, Mr. Lucas died while Harris County officers effectively hogtied him.” Plaintiffs’ Exhibit 24, pages 7-8. This opinion and discussion of the DOJ Findings Letter should not be admitted against Defendants. See Defendants’ their Motion to Strike Plaintiffs’ Counsel’s Affidavit and Certain Exhibits; see also Paragraph 6, *supra*.

- d. “The force used was objectively excessive to the need, as Mr. Lucas was not actively harming anyone (including himself) when the decision to extract him was made, the officers were aware he was behaving bizarrely and had removed the smoke detector and were closely monitoring his behavior.” See Plaintiffs’ Exhibit 24, Page 8. This opinion should not be admitted against the Defendants, as Plaintiffs themselves have introduced evidence that Defendants did not make the decision to activate the Detention Command Containment Team (“DCCT”); that decision was made by Lt. Anderson on behalf of the Sheriff’s Office. See Plaintiffs’ Exhibit 5, page 17, lines 9-11 . Additionally, this opinion is confusing and prejudicial. There is no evidence that Defendants were “closely monitoring” Kenneth Lucas’ behavior; their sole role was to perform the extraction as members of the DCCT. Finally, in performing the extraction, Defendants were acting pursuant to Harris County policies, procedures and training.
- e. “Third, if a cell extraction really was necessary (though it was not), a member of the medical staff should have been present to monitor Mr. Lucas’ health closely during the extraction...Harris County now requires a medical staff member and a

separate ‘safety officer’ participate in each cell extraction.” See Plaintiffs’ Exhibit 24, page 9. This opinion should not be admitted against Defendants. As discussed above, Defendants did not make the decision to extract Kenneth Lucas on February 17, 2014, nor did they have any input into the decision to extract. Defendants had no control over the protocol set out by the Sheriff’s Office with regard to the presence of medical and/or safety officer personnel during an extraction. Admission of this opinion is thus irrelevant to Plaintiffs’ claim against Defendants individually, would be confusing, and is prejudicial to them.

- f. “2 “Though I do not make any determinations regarding credibility, it is hard to believe that officers were unable to hear Mr. Lucas during the extraction due to their protective helmets. I have worn similar helmets in the past, and they do not significantly prevent anyone from hearing.” See Plaintiffs’ Exhibit 24, page 10, footnote 2. This is clearly an improper credibility determination by Mr. McAndrew, and should be excluded as such.
- g. “Even after acknowledging Mr. Lucas had died, the officers involved seemed unconcerned about the consequences of their actions...”. See Plaintiffs’ Exhibit 24, page 11. This opinion is wholly irrelevant to the qualified immunity analysis, is untrue and completely inappropriate. It should be excluded as improper credibility determination, irrelevant and highly prejudicial.

#### **SUMMARY OF THE ARGUMENT**

15. Plaintiffs have sued Defendants, the members of the Sheriff’s Office DCCT who extracted Kenneth Lucas from his cell on February 17, 2014, in their individual capacities. At all times relevant hereto, Defendants were acting within the scope of their authority as peace and/or

detention officers, were performing discretionary duties, and were acting in good faith. Defendants are entitled to qualified immunity. Each of the Defendants' actions must be considered separately for purposes of the qualified immunity analysis. While there are some common legal issues with regard to Defendants, Plaintiffs bear the burden of overcoming each individual Defendant's entitlement to qualified immunity. Plaintiffs have failed to carry their burden on all of their claims against Defendants, and Defendants are entitled to judgment as a matter of law.

### **REPLY**

#### **A. FIFTH CIRCUIT AUTHORITY REQUIRES THAT EACH DEFENDANT'S ACTIONS BE CONSIDERED SEPARATELY**

16. Established Fifth Circuit authority provides that when considering Defendants' entitlement to qualified immunity, each of their actions must be considered completely separately from those of the other officers. Considering Defendants' actions collectively or as a group is improper for purposes of qualified immunity. See Meadours v. Ermel, 483 F.3d 417, 421 (5th Cir. 2007), citing Stewart v. Murphy, 174 F.3d 530, 537 (5th Cir. 1999); see also Hernandez v. Texas Dep't of Protective and Regulatory Servs., 380 F.3d 872, 883-84 (5th Cir. 2004)(examining the culpability of each individual defendant to determine if he deprived Plaintiff of a constitutional right); Atteberry v. Nocona General Hosp., 430 F.3d 245, 253 (5th Cir. 2005 (same); see also Tarver v. City of Edna, 410 F.3d 745, 752-54 (5th Cir. 2005)(examining the conduct of two officers independently and finding that one was entitled to qualified immunity and the other was not.) Accordingly, in its qualified immunity analysis, the Court must examine the conduct of each of the Defendants separately.

**B. DEFENDANTS’ USE OF FORCE AGAINST KENNETH LUCAS WAS OBJECTIVELY REASONABLE**

17. Plaintiffs allege that Defendants used excessive force against Kenneth Lucas during the cell extraction. To establish their claim, Plaintiffs must prove that the force used against Kenneth Lucas on February 17, 2014 was objectively unreasonable. See Kinglsey v. Hendrickson, 135 S. Ct. 2466, 2470 (2015).<sup>1</sup>

18. Plaintiffs rely on Gutierrez v. City of San Antonio, 139 F. 3d 441 (5th Cir. 1998) to support their position that Defendants used excessive deadly force against Kenneth Lucas on February 17, 2014, allegedly by placing him in a hogtie position.<sup>2</sup> In its opinion, however, the Fifth Circuit described its holding as “very limited”. See Gutierrez, Id. at 451. The Fifth Circuit noted that “Both the San Diego Study and Criminal Law Update article suggest hog-tying may present a substantial risk of death or serious bodily harm only in a limited set of circumstances—*i.e.*, when a drug-affected person in a state of excited delirium is hog-tied and placed face down in a prone position.” See Gutierrez, Id. at 451.

19. Gutierrez does not support Plaintiffs’ position that Defendants are liable to them for the use of excessive force against Kenneth Lucas. This case is factually different from Gutierrez in several respects. First, the decedent in Gutierrez was actually hog-tied. See Gutierrez at 443. See page 24, footnote 2. In this case, however, Plaintiffs contend that Kenneth Lucas was

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<sup>1</sup> In their Motion for Summary Judgment, Defendants Leveston, Bell, Green, Thomas and Kneitz argued that subjective deliberate indifference was required to establish Plaintiffs’ use of force claim against them. Defendants Leveston, Bell, Green, Thomas and Kneitz acknowledge that Kingsley establishes the proper standard and withdraw that portion of their argument. See DOC. NO. 145.

<sup>2</sup> It is undisputed that in Gutierrez, the San Antonio officers actually hogtied the decedent. In Gutierrez, “Solis got his personal leg restraint device from the patrol car, a nylon rope with a loop on one end and a clasp on the other (a “hog-tie”). Walters placed the loop around Gutierrez’s feet, and Solis linked the clasp around the handcuffs, drawing Gutierrez’s legs backward at a 90 degree angle in an “L” shape, thereby ‘hog-tying’ him.” Gutierrez, Id. at 443. In this case, it is undisputed that Kenneth Lucas’s hands and legs were not linked. Thus, Lucas was not hog-tied. Plaintiffs’ case is based on their contention that Lucas was placed in a “hog-tie” position.

improperly placed in a “hog-tie position”. See Response, generally. Because this case does not involve an actual hogtie, Gutierrez cannot be extended to these facts. Further, Gutierrez did not provide notice to Defendants that the use of the prone position and the position of the officers for transport of Kenneth Lucas constituted unlawful deadly force.

20. Gutierrez also requires that a “drug-affected person in a state of excited delirium”, who is then placed face down in a prone position. See Gutierrez, Id. at 451. In Gutierrez, the officers were aware that the decedent was drug affected, as the decedent himself advised them that he had “shot some bad coke.” See Gutierrez, Id. at 443. Even if one were to extend the holding with regard to “drug-affected person in a state of excited delirium” who had “shot some bad coke” to include that of an inmate withdrawing from Xanax, there is no evidence that any of the Defendants had any knowledge of that fact that Kenneth Lucas was withdrawing Xanax, or indeed, of any other fact with regard to Kenneth Lucas’ medical or mental health status or history. No medical information about Inmate Lucas was communicated to the officers prior to his extraction. At the time of this incident, detention personnel had been instructed by the Sheriff’s Office that the HIPPA privacy law prevented any officer from being informed of any inmate’s medical and/or mental health history. See DOC. NO. 150, Exhibit “1”, page 9. Plaintiffs themselves have introduced evidence to this effect. See Plaintiffs’ Exhibit 5, Page 49, lines 11-19.<sup>3</sup> Although Plaintiffs are very critical of the officers for not obtaining medical and/or mental health information with regard to Kenneth Lucas, it would have been futile for the officers to have requested that information from the Medical Division, as it would not have been provided. See DOC. NO. 150, Exhibit “1”, page 9. Plaintiffs themselves have introduced evidence to this effect. See DOC. NO. 175, Exhibit 5, page 49, lines 11-21, line 23-page 50, line 5; page 50, line 25-page 51, line 3.

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<sup>3</sup> Lt. Anderson testified that she did not contact the clinic to find out more about Kenneth Lucas because the clinic would not have provided that information.

21. Defendants' use of force against Kenneth Lucas was objectively reasonable under Kingsley because Defendants acted pursuant to their training, as well as pursuant to the policies and procedures of Harris County with regard to cell extractions and transport to the Harris County Jail Medical Clinic following a cell extraction which involved the use of force. Plaintiffs themselves introduced that evidence in their Response with Exhibit 5, Lt. Anderson's deposition. At the time of the cell extraction of Kenneth Lucas, Lt. Anderson was the Watch Commander for the first shift at the Harris County Jail located at 1200 Baker Street, Houston. Lt. Anderson was responsible for overseeing the entire shift, including overseeing the sergeants who oversee the detention officers. See Exhibit 5, Page 6, lines 12-21. According to policy, at that time, Lt. Anderson was permitted to activate the DCCT team based on her discretion. See Exhibit 5, page 17, lines 23-25. Prior to the extraction of Kenneth Lucas, Lt. Anderson had been involved in five to six other cell extractions. Two of those cell extractions involved the use of a gurney. On both of these occasions, in which a gurney was used, the inmates had been cuffed and shackled like Kenneth Lucas, and had been placed face down on the gurney as Kenneth Lucas was. On those occasions, there had been a team member who straddled their legs, which were crossed and bent. Neither of the extractions resulted in any harm to the inmate. See Plaintiffs' Exhibit 5, page 20, line 24-page 31, line 22.

22. Lt. Anderson testified that the manner in which Kenneth Lucas was placed on the gurney for transport to medical following the extraction was as she had seen it done and participated in doing on prior occasions. See Plaintiffs' Exhibit 5, page 31, line 23-Page 32, line 3. Lt. Anderson also testified that the shackling of Kenneth Lucas's ankles, crossing his legs, bending them, an officer straddling the legs, two people holding his arms, one on each arm and his arms behind his back cuffed, facedown on the gurney was done according to Sheriff's Office

training. See Plaintiffs' Exhibit 5, Page 32, lines 7-13. Further, all of the above was according to the Sheriff's Office policies and procedure for an extraction and transport. See Plaintiffs' Exhibit 5, page 32, lines 14-16. See also DOC. NO. 150, Exhibit "1", page 10 ("I performed each of my duties in connection with the cell extraction of Inmate Lucas in the manner in which I had been trained and instructed to do by the Sheriff's Office. As acting supervisor for the extraction of Inmate Lucas on February 17, 2014, I believe that each of the deputies on the DCCT performed his or her duties in the manner in which he or she had been trained and instructed by the Sheriff's Office, including the manner in which Inmate Lucas was transported to the clinic. There is nothing that could have informed me and/or any of the members of the DCCT that the procedures deployed were in violation of any corrections procedure in light of following the established Harris County training and protocol."); see DOC. NO. 150, Exhibit "2", page 10 ("I was trained by the Sheriff's Office to cross, bend and cuff the legs of an inmate who is being transported to the Harris County medical clinic on a gurney. I was also trained by the Sheriff's Office to hold the legs in that position in the situation in which the inmate is resisting. ..I have been trained by the Sheriff's Office not to hogtie an inmate....I performed each of my duties in connection with the cell extraction of Inmate Lucas in the manner in which I had been trained and instructed to do so by the Sheriff's Office. As Team Leader for the extraction of Inmate Lucas on February 17, 2014, I believe that each of the deputies on the DCCT performed his duties in the manner in which he had been trained and instructed by the Sheriff's Office, including the manner in which Inmate Lucas was transported to the clinic.")

23. Even if Gutierrez were to apply, which Defendants deny, there is nothing which would have informed Defendants that the procedures they deployed to extract Kenneth Lucas from his cell and transport him to the Harris County Jail medical clinic violated any corrections

procedure or violated Inmate Lucas' constitutional rights. For this reason, Defendants' use of force<sup>4</sup> in connection with the cell extraction and transport of Kenneth Lucas on February 17, 2014 was objectively reasonable and Defendants are entitled to qualified immunity on this claim.

24. In their Response, Plaintiffs contend that there was no need to enter the cell to confiscate the smoke detector. See Response, page 72. The summary judgment evidence establishes, however, that the decision to activate the DCCT was not made by Defendants. Rather, the summary judgment evidence establishes that on February 17, 2014, Deputy Gordon was notified by Lt. Anderson that she might need to activate the DCCT. After that, members of the DCCT were instructed by building page to report to the 6<sup>th</sup> floor training room of the Harris County Jail located at 1200 Baker Street. See DOC. No. 150, Exhibit "1", page 4. Lt. Anderson activated the DCCT. See Plaintiffs' Exhibit 5, page 17, lines 23-25. Thus, to the extent that Plaintiffs complain about the team even being activated, that claim is unavailing as even Plaintiffs have introduced evidence that none of the Defendants activated the DCCT.

**C. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFFS' DEPRIVATION OF MEDICAL CARE CLAIM**

25. Plaintiffs allege that Defendants deprived Kenneth Lucas of medical care. However, it is undisputed that after Inmate Lucas had been extracted from his cell, he was transported to the clinic to receive medical care. Again, Plaintiffs themselves have introduced evidence that it was the Medical Division's "scene" once defendants arrived at the Harris County Jail clinic. See Plaintiffs' Exhibit 5, page 36, lines 3-9; Page 38, lines 10-13 ("It was their [medical's] scene; lines 13-24 ("If [Nurse O'Pry] had asked the Defendants if she could roll Kenneth Lucas onto his back and handcuff and shackle him to the stretcher, the Defendants would have done that, because it was Lt. Anderson's responsibility to do what the medical staff is saying

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<sup>4</sup> Neither Deputy Gordon nor Officer Kneitz used any force in connection with Kenneth Lucas' cell extraction.

to do, because they are the ones who are in charge there.”) Plaintiffs have cited no case which would put Defendants on notice that having transported an inmate to a medical provider such as a clinic, they are responsible for directing the inmate’s medical care. For these reasons, Defendants are entitled to judgment as a matter of law on this claim.

**D. DEPUTY GORDON IS ENTITLED TO QUALIFIED IMMUNITY ON THE FAILURE TO SUPERVISE CLAIM**

26. Plaintiffs have not pled a failure to supervise claim against Deputy Gordon per se. Nonetheless, in Paragraph 63 of the Fourth Amended Complaint, Plaintiffs allege that then Harris County Sheriff Adrian Garcia delegated his duty to supervise, train and direct County Jail officers and other staff to Deputy Gordon. Plaintiffs further allege in Paragraph 63 of the Fourth Amended Complaint that Deputy Gordon was a policymaker for Harris County. See DOC. NO.77, page 23.

27. At the time of Kenneth Lucas’ extraction, Deputy Gordon was a member of the DCCT and was assigned the acting supervisor position. See DOC. NO. 150, Exhibit “1”, page 5. It is undisputed that the cell extraction was performed by Defendants in the manner in which they had been trained by the Sheriff’s Office, and pursuant to the policies and procedures of the Sheriff’s Office. Plaintiffs themselves have introduced evidence of this fact. See Plaintiffs’ Response, Exhibit 5. After Deputy Gordon unsuccessfully attempted to talk Kenneth Lucas into giving up the smoke detector, the DCCT entered the cell to extract Kenneth Lucas. As he observed the officers assigned to the DCCT perform the extraction, Deputy Gordon observed that each officer performed his or her role in the manner which was prescribed by the Sheriff’s Office. See DOC. NO. 150, Exhibit “1”. There is no evidence of any other supervisory duties assigned by the Harris County Sheriff to Deputy Gordon, and no evidence that Deputy Gordon had been delegated the authority to train and direct Harris County Jail officers and staff.

28. To establish a failure to supervise claim, Plaintiffs are required to establish a connection between the supervisor's action and the constitutional violation. Specifically, Plaintiffs must establish that the supervisor (1) failed to supervise the officers; (2) there is a causal connection between the failure to supervise and the constitutional violation; (3) the supervisor acted with gross negligence or deliberate indifference. See Baker v. Putnal, 75 F. 3d 190, 191 (5<sup>th</sup> Cir. 1996).

29. Deputy Gordon denies that he is a supervisor; his role on February 17, 2014 was solely that of acting supervisor for the cell extraction of Kenneth Lucas, and for no other purpose. See DOC. NO. 150, Exhibit "1", page 5. Even if Deputy Gordon were a supervisor, however, he is entitled to qualified immunity on this claim. First, there is no evidence of a failure to supervise on Deputy Gordon's part. Second, as discussed above, the use of force against Kenneth Lucas on February 17, 2014 was objectively reasonable and thus did not violate Kenneth Lucas' Fourteenth Amendment rights. See Section B, *supra*. Finally, there is no evidence of deliberate indifference on Deputy Gordon's part. As even Plaintiffs have conceded, Deputy Gordon and each of the other Defendants were acting in every respect with regard to the training and policies and procedures set out by the Sheriff's Office for cell extractions. For these reasons, Deputy Gordon is entitled to qualified immunity on this claim.

#### **E. PLAINTIFFS HAVE FAILED TO ESTABLISH THE REQUISITE CAUSATION**

30. The Fifth Circuit has held that a Plaintiff seeking to recover on a wrongful death claim under Section 1983 must prove both the alleged constitutional deprivation required by Section 1983 and the causal link between the defendant's unconstitutional acts or omissions and the death of the victim, as required by the Texas Wrongful Death Statute. Under the Texas Wrongful Death Act, liability may be predicated only on 'an injury that causes an individual's

death.” That is, a plaintiff seeking to recover under Texas’s Wrongful Death statute must demonstrate that the Defendants’ wrongful actions more likely than not caused the decedent’s death—not just that they reduced the decedent’s chance of survival by some lesser degree.” See Slade v. City of Marshall, 814 F. 3d 263, 265 (5th Cir. 2016).

31. Plaintiffs introduced the Affidavit of their expert, Robert L. Cohen, MD in their Response. See DOC. NO. 175, Exhibit 19. At Page 16 of Doc. 175, Dr. Cohen opines “Any check of the vital signs [of Kenneth Lucas] in the clinic would likely have found that Lucas was exhibiting respiratory distress. At the early stages, this would have included a high pulse as the body attempted to get more oxygen. At its latter stages, this would have included a lower blood pressure as the heart began to fail. Had the vital signs been taken immediately and monitored throughout Mr. Lucas’ time in the infirmary, and had the hog tie position<sup>5</sup> been changed promptly, Lucas would in all probability have survived without neurologic and cardiac compromise due to a lack of oxygen.”

32. Defendants deny that they engaged in any wrongful conduct. However, even if they had hogtied Kenneth Lucas, which they deny, this did not cause his death in the manner required by the Texas Wrongful Death Act. Plaintiffs’ expert opines that Kenneth Lucas’s death was essentially caused by the failure to change his position, and the failure to take his vital signs immediately and monitor his vital signs. This was the responsibility of the medical personnel, and not that of Defendants. There is no genuine issue of material fact, and Defendants are entitled to judgment as a matter of law.

WHEREFORE, PREMISES CONSIDERED, Defendants Harris County Sheriff’s Office Deputy David Gordon, Deputy Xavier Leveston, Detention Officer Broderick Green, Detention

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<sup>5</sup> Defendants deny that they hogtied Kenneth Lucas.

Officer Alicia Scott, now known as Riley Scott, Detention Officer Jesse Bell, Detention Officer Morris Thomas, and Detention Officer Adam Kneitz in their Individual Capacities respectfully request that the Court grant their Motion for Summary Judgment in its entirety and for such other and further relief to which they may show themselves entitled.

Respectfully submitted,

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DETENTION OFFICER JESSE BELL,  
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AND DETENTION OFFICER ADAM KNEITZ  
IN THEIR INDIVIDUAL CAPACITIES

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2018, a true and correct copy of **DEFENDANTS' AMENDED OBJECTIONS AND REPLY TO PLAINTIFFS' CONSOLIDATED RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** was delivered to all counsel of record pursuant to the Federal Rules of Civil Procedure via CM/ECF system:

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